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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Eugene A. Gabrielli,

Plaintiff,

v.

New Penn Financial LLC, d/b/a Shellpoint  
Mortgage Servicing; Equifax Information  
Services, LLC; Experian Information  
Solutions, Inc.; and Transunion, LLC

Defendants.

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

**1. FCRA, 15 USC § 1681 *et seq.***

Plaintiff Eugene Gabrielli (“Plaintiff”), through his attorneys, alleges the following against New Penn Financial LLC, d/b/a Shellpoint Mortgage Servicing (“Shellpoint”); Equifax Information Services, LLC (“Equifax”); Experian Information Solutions, Inc. (“Experian”); and Transunion, LLC (“Transunion”), respectively and collectively referred to as the (“Defendants”):

**INTRODUCTION**

This is a single-count complaint based on violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, against Defendants and their agents for their unlawful reporting of inaccurate information on Plaintiff’s credit report.

**JURISDICTION AND VENUE**

1. Jurisdiction of the court arises under 28 U.S.C. § 1331.

2. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District.

3. Defendants transact business in the State of Arizona; therefore, personal jurisdiction is established.

### **PARTIES**

4. Plaintiff is a natural person residing in Tempe, AZ.

5. Plaintiff is a (“consumer”) as defined by the FCRA, 15 U.S.C. § 1681a(c).

6. Defendant Shellpoint is a (“furnisher”) under 15 U.S.C. § 1681a(r)(5) with its principal place of business located at 2711 Centerville Road, Ste 400, Wilmington, DE, 19808.

7. Shellpoint can be served through its Arizona statutory agent Corporation Service Company, at its registered address located at 2338 W Royal Palm Road, Ste J, Phoenix, AZ 85021.

8. Defendant Equifax is a (“credit reporting agency”), as defined under 15 U.S.C. 1681a(f), with its principal place of business located at 1550 Peachtree Street NW, Atlanta, Georgia 30309.

9. Defendant Experian is a (“credit reporting agency”), as defined under 15 U.S.C. 1681a(f), with its principal place of business located at 475 Anton Boulevard, Costa Mesa, California 92626.

10. Defendant Transunion is a (“credit reporting agency”), as defined under 15 U.S.C. 1681a(f), with its principal place of business located at 555 West Adams Street, Chicago, IL 60661.

11. Defendants acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### **FACTUAL ALLEGATIONS**

12. In or around December of 2006, Plaintiff took acquired the property located at 4019 E Saint John Road, Phoenix, AZ 85032.

1           13.     The property is a single-family home comprised of three bedrooms, two  
2     bathrooms, and occupying 1,092 square feet.

3           14.     Plaintiff used a first and second mortgage to acquire the property.

4           15.     In 2008 the financial crisis hit and Plaintiff began experiencing financial  
5     difficulties.

6           16.     In addition to his financial challenges, Plaintiff's home lost significant value  
7     and was seriously under water.

8           17.     In or around 2011, Shellpoint foreclosed on the property.

9           18.     On or about January 27, 2012, the trustee sold the property at auction under  
10    ARS § 33-807.

11          19.     Because Shellpoint had sold the property by Trustee sale, Shellpoint was  
12    barred from collecting on the deficiency in any way.

13          20.     Despite having exercised its rights to foreclose through a non-judicial action,  
14    Shellpoint continued to report to credit reporting agencies the difference between the  
15    amount obtained by sale and the amount of the indebtedness, interests, costs and expenses,  
16    ever since the property was sold.

17          21.     On or about January 2, 2018, after discovering that Shellpoint was  
18    continuing to erroneously report a balance owed, Plaintiff sent letters to Defendants  
19    Equifax, Experian, and Transunion disputing the reporting of the debt on his credit report.

20          22.     Upon information and belief, Defendants Equifax, Experian, and  
21    Transunion informed Shellpoint that Plaintiff was disputing the reporting on his file.

22          23.     On or about January 24, 2018, Experian sent a reply letter to Plaintiff.  
23    Experian replied that it had "updated" the Shellpoint account, yet still reports the  
24    Shellpoint account.

25          24.     On or about January 24, 2018, Transunion sent a reply letter to Plaintiff, in  
26    which Transunion still reports the Shellpoint account.

27          25.     On or about January 24, 2018, Equifax sent a reply letter to Plaintiff, in  
28    which Equifax still reports the Shellpoint account.



1 that a consumer disputes information that is being reported by a furnisher, to conduct an  
2 investigation with respect to the disputed information.

3 38. Defendants Equifax, Experian, and Transunion failed to employ and follow  
4 reasonable procedures to assure maximum possible accuracy of Plaintiff's credit report,  
5 information, and file, in violation of 15 U.S.C. § 1681e(b).

6 39. Defendants Equifax, Experian, and Transunion failed to conduct a  
7 reasonable investigation under 15 U.S.C. § 1681i.

8 40. Defendants Equifax, Experian, and Transunion violated sections 1681n and  
9 1681o of the FCRA by engaging in the following conduct that violates 15 U.S.C. § 1681s-  
10 2(a), (b):

- 11 a. Willfully and negligently failing to conduct an investigation of the  
12 inaccurate information that Plaintiff disputed;
- 13 b. Willfully and negligently failing to review all relevant information  
14 concerning Plaintiff's file;
- 15 c. Willfully and negligently failing to report the inaccurate status of the  
16 inaccurate information to all credit reporting agencies;
- 17 d. Willfully and negligently failing to properly participate, investigate and  
18 comply with the reinvestigations that were conducted by any and all credit  
19 reporting agencies concerning the inaccurate information disputed by  
20 Plaintiff; and
- 21 e. Willfully and negligently continuing to furnish and disseminate inaccurate  
22 and derogatory credit, account and other information concerning Plaintiff to  
23 the other credit reporting agencies.

24 41. The FCRA requires a furnisher such as Shellpoint, either after receiving  
25 notice directly from the consumer or from a credit reporting agency that a consumer  
26 disputes information that is being reported by that furnisher, to conduct an investigation  
27 with respect to the disputed information. The investigation involves (a) reviewing all  
28 relevant information, (b) reporting the results of the investigation to the credit reporting

1 agency, and (c) if the investigation reveals that the information is incomplete or inaccurate,  
 2 reporting those results to all other credit reporting agencies to which the furnisher has  
 3 provided the inaccurate information.

4 42. Defendant Shellpoint failed to conduct a reasonable investigation following  
 5 receipt of no less than **three** indirect disputes under 15 U.S.C. § 1681s(2)(b).

6 43. Defendant Shellpoint has willfully provided inaccurate information to  
 7 Defendants Equifax, Experian, and Transunion, despite Arizona's anti-deficiency statute.

8 44. Defendants' conduct was a direct and proximate cause, as well as a  
 9 substantial factor, in causing serious injuries, damages and harm to Plaintiff that are  
 10 outlined more fully above, and as a result, Defendants are liable to compensate Plaintiff  
 11 for the full amount of statutory, actual and punitive damages, along with attorneys' fees  
 12 and costs, as well as other such relief, permitted by 15 U.S.C. § 1681n.

13 45. As a result of the above-described violations Plaintiff has sustained damages  
 14 including loss of the opportunities to obtain credit or better credit conditions, emotional  
 15 distress, and mental and physical pain.

16 46. Defendants' violation of the FCRA was willful and therefore Plaintiff is  
 17 entitled to seek statutory and punitive damages.

### 18 **JURY DEMAND**

19 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by  
 20 jury of all issues triable by jury.

### 21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff Eugene Gabrielli respectfully requests judgment be  
 23 entered against Defendants for the following:

- 24 A. Declaratory judgment that Defendants Shellpoint, Equifax, Experian, and
- 25 Transunion violated the FCRA;
- 26 B. Actual damages pursuant to 15 U.S.C. § 1681n(a);
- 27 C. Statutory damages pursuant to 15 U.S.C. § 1681n(a)(1)(A);
- 28 D. Punitive damages pursuant to 15 U.S.C. § 1681n(a)(2);

- 1 E. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §§1681n(c) and  
2 1681o(b);  
3 F. Awarding Plaintiff any pre-judgment and post-judgment interest as may be  
4 allowed under the law; and  
5 G. Any other relief that this Court deems appropriate.  
6

7 Respectfully submitted this 11<sup>th</sup> day of July of 2018.

8 By: /s/ David A. Chami  
9 David A. Chami  
10 Attorneys for Plaintiff  
11 Eugene Gabrielli  
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